

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease NM 68785.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

Disagreement with BLM's interpretation of relevant geology is insufficient to establish error in a BLM decision to reject a high bid for an oil and gas lease. Such a decision will be affirmed on appeal where error in the decision is not shown and it is not proved that the rejected bid represents fair market value.

APPEARANCES: Mark Wheeler, Midland, Texas, for appellant; Margaret C. Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Maralo Inc. has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 26, 1987, rejecting its high bid for parcel 96 (PN-96, NM 68785) in the BLM May 20, 1987, competitive oil and gas lease sale. PN-96 includes 280 acres of land in an undefined field of a known geologic structure situated in N\ SW^, SW^ SW^ and SE^, sec. 11, T. 22 S., R. 25 E., New Mexico Principal Meridian, Eddy County, New Mexico. On May 27, 1987, BLM sent appellant a notice of probable rejection of its May 20, 1987, high bid of \$14,560.50, comprising \$52 per acre for PN-96. Appellant's bid exceeded the only other bid of \$6129.20, amounting to \$21.89 per acre. Nonetheless, BLM found that appellant's bid was lower than the presale estimated value (PEV) assigned to the parcel. BLM, however, did not reveal the PEV figure to appellant. BLM provided appellant 15 days within which to submit information, including interpretations of engineering, geologic, or geophysical data to explain why its bid should be not be rejected.

In response to BLM's May 27, 1987, notice, appellant submitted an isopach map of the Bone Springs Sand Formation which appellant explained was

used in preparing the bid for PN-96. Interpreting the isopach, appellant stated that a significant isopach sand section from the Bone Springs Sand Formation lies beneath PN-96. Reasoning that a larger portion of the Bone Springs formation lies beneath sec. 22 which it leased for \$50 per mineral acre, than under PN-96 for which it offered \$52, appellant argued that its high bid of \$52 per acre was reasonable and should not be rejected.

On June 26, 1987, BLM issued a decision rejecting appellant's high bid. The decision stated that the information provided by Maralo was inadequate to support acceptance of the high bid. The decision enclosed a report from the Chief, Branch of Appraisals and Evaluation recommending rejection of Maralo's bid. The report contained BLM's lease sale data and discounted cash flow (DCF) analysis information used in deriving the valuation for PN-96 (Attachment 1) and noted that "the formation(s) likely to produce in the geologic setting within which PN-96 is located include the Strawn, Atoka and Morrow" (Report at 1). The report continued that:

On the basis of its physical and economic similarities and dissimilarities to other leased properties, (see the Uniform Appraisal Standards For Federal Land Acquisitions, at page 9) and using discounted cash flow (DCF) procedures an indicated price (IP), or value, was derived for PN-96. Based on the IP of \$195 we recommend that the high bid on PN-96 be rejected.

Id. The report stated further:

The production in the immediate vicinity of the parcel is from the Strawn, the Atoka, and the Morrow formations. Northeast of the parcel in Section 1, approximately 1 mile, a well was abandoned in 1981 after producing 4.9 BCF [billion cubic feet] in 20 years. West of the parcel in Section 10 is an active oil well and a gas well.

Previous lease sale data for this area includes two parcels in Section 11, both in the \$330.00 range (January 22, 1986 and August 28, 1985). Other parcels in the area range from \$198.09 to \$330.00 per acre, all with similar geology.

A DCF analysis was run on this parcel, evaluating the Morrow and Strawn formations. The Bone Springs formation was not evaluated in this appraisal because of the large potential for a Morrow or Strawn formation producer. The DCF analysis indicates that this parcel is in the \$195 an acre range. Therefore, this appraisal recommends the rejection of Maralo's high bid of \$52 per acre.

(Report at 1-1).

It is well established that the Secretary of the Interior has discretionary authority to reject a bid for a competitive oil and gas lease if the bid is deemed inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); Victor P. Smith, 101 IBLA 100 (1988); MTS Limited Partnership, 95 IBLA 337 (1987); Michael Shearn, 87 IBLA 168 (1985). This Board has consistently

upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for the parcel. E.g., Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., 80 IBLA 245, 246 (1986). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value of the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Eugene Chmelar, 104 IBLA 301, 303 (1988).

When exercising the Secretary's authority to reject a high bid the Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Victor P. Smith, *supra*; Viking Resources Corp., *supra* at 247; L.B. Blake, 67 IBLA 103 (1982). Although the Board has held that BLM should provide a rational basis for

its determination to reject a high bid, we have also concluded that even where BLM fails to provide a rational basis for its rejection decision or where the high bidder shows BLM has erred in its determination of a minimum acceptable bid value, the high bidder must establish that his bid represents fair market value in order to be awarded the lease. Eugene Chmelar, *supra*; Southern Union Exploration Co., 97 IBLA 275, 277 (1987); Suzanne Walsh, 96 IBLA 374 (1987).

[1] Appellant asserts on appeal that BLM's valuation of \$195 per acre for PN-96 is based on inaccurate data and unfounded reasoning that the Strawn, Atoka, and Morrow Formations underlying PN-96 are comparable to structural, producing fields in those same formations in the area (Statement of Reasons (SOR) at 1). Appellant maintains BLM's map inaccurately discounts numerous dry holes in the area and mistakes the horizons from which production in the area occurs (SOR at 2). To support this argument, appellant produced maps labeled "Strawn lime marker" and "Morrow lime marker," which depict structural highs to the immediate west and north and with regional dip averaging 200 to 300 feet to the east-southeast in the vicinity of PN-96.

Appellant contends that Strawn and Morrow production occurs on the structural highs and that PN-96 is substantially off-structure. Consequently, appellant opines that the Strawn, Atoka, or Morrow formations are not viable commercial objectives under PN-96 because of the structure established by deep test wells drilled in the area. Rather, appellant submits that the Delaware Sands and the Bone Springs Formations are the only possible formation under PN-96 potentially productive of gas (SOR at 2). Appellant has furnished a copy of an interpretive map of Bone Springs in support of this argument.

Appellant states BLM's analysis failed to consider that the majority of commercial producing wells in the area are low cumulative recovery wells of 100 to 800 million cubic feet (MMCF). The Canyon and Atoka Formation producers are said to be localized stratigraphic accumulations and, with one exception, also low potential wells of 300-800 MMCF (SOR at 2).

Concerning calculation of value, appellant urges that BLM mistakenly took into account one well, the Belco Development Corporation Pennzoil State

#1, located in the NW<sup>^</sup> NE<sup>^</sup> of sec. 16, T. 22 S., R. 25 E., Eddy County, New Mexico, which produced some 2.6 BCF of gas. It is argued that the Belco well is positioned 280 feet above the westernmost portion of PN-96, indicating that production from this well is not relevant to PN-96, and that the results of deep dry test wells in secs. 2, 10, 13, and 15 of Township 22, preclude the existence of a related productive structure under PN-96 (SOR at 2).

Maralo further challenges the reliability of BLM's sales data because it included bids made prior to the decline in energy prices and corresponding decrease in leasing activity. Appellant argues that the "Grid Quality Indicators" sheet used by BLM to establish previous sale data is obsolete and fails to justify the \$195 per-acre-value calculated by BLM. Appellant observes that two sales referenced in BLM's June 26, 1987, memorandum were both made prior to the drop in energy prices which occurred in first quarter 1986. Moreover, appellant asserts that data provided by BLM strengthens its claim that its bid represented fair market value, since three of the four bids relied upon by BLM were between \$41 and \$66.69 per acre. These lower figures, appellant submits, are consistent with its recent success in leasing fee acreage at all depths in the immediate area for \$50 per acre, and are supported by the New Mexico State Office's recent acceptance of \$61 per acre from Maralo for tract PN-52 in the same area (SOR at 3). The PN-52 acreage situated in the E\ E\, SW<sup>^</sup> SE<sup>^</sup> and SE<sup>^</sup> SW<sup>^</sup> of sec. 21, T. 22 S., R. 25 E., appellant avers, has Delaware and Bone Springs Formation potential, and is better situated structurally than PN-96 for Strawn and Morrow potential (SOR at 3).

In rejecting appellant's bid, BLM considered high bids received for six tracts situated in the same geographical and geologic setting as PN-96. They included various subdivisions in sec. 11, T. 22 S., R. 25 E., for which a high bid of \$329 an acre was received on August 28, 1985; the NW<sup>^</sup> of sec. 11, T. 22 S., R. 25 E., for which a high bid of \$330 an acre was received on January 22, 1986; lots 5 and 6 of sec. 12, T. 22 S., R. 25 E., for which a high bid of \$303 an acre was received on August 28, 1985; lots 1, 2, 3, and 4 of sec. 13, T. 22 S., R. 25 E., for which a high bid of \$333 an acre was received on August 28, 1985; the W\ W\ of sec. 14, T. 22 S., R. 25 E., for which a high bid of \$330 an acre was received on January 22, 1986; and lots 1 and 4 of the E\ SE<sup>^</sup> of sec. 15, T. 22 S., R. 25 E., for which a high bid of \$330 an acre was received on January 22, 1986. Appellant has offered no proof that the foregoing six parcels identified by BLM as comparables are not geologically similar to PN-96. Nor do appellant's structure maps place BLM's comparables in structurally dissimilar settings than PN-96. The high bids for the parcels found by BLM to be comparable ranged from \$329 to \$303 per acre. Although appellant opines that production from the Strawn and Morrow Formations is unlikely, both BLM's and appellant's maps depict several wells producing from the Strawn and Morrow Formations in close proximity to PN-96.

Appellant has tendered a possible interpretation of the relevant valuation data. However, appellant has not shown that BLM's interpretation of the geological data pertinent to this matter is erroneous. The fact that the geological data gives rise to reasonable differences of opinion is not sufficient to show error in BLM's decisionmaking, where the record reveals

that BLM's decision relied on the reasoned analysis of the Secretary's technical experts involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Victor P. Smith, supra; Viking Resources Corp., supra at 247; L.B. Blake, supra at 106.

Appellant contends that BLM has failed to give consideration to the fact that many of the wells which have produced are low cumulative recovery wells. Nevertheless, the case file reveals that BLM has not assumed, as appellant contends, that comparable wells will all produce 2.6 BCF similar to the Belco Development Corporation Pennzoil State #1 well. The record on appeal reveals that BLM's value calculation took into account the variable cumulative recovery of comparable wells in the vicinity of PN-96 (Report at 1-4). For example, BLM's calculation factored in a low reserve figure of 175,000 MCF, a high reserve figure of 2,750,000 MCF and a most probable reserve figure of 1,150,000 MCF, along with variable decline curve rates ranging from a low of .28 to a high of .32 (Report at 1-4). No error has been shown in this aspect of BLM's decisionmaking.

Appellant maintains that recent sales better reflect the decline in the oil and gas markets, as indicated by several high bids accepted by BLM in Eddy County ranging from \$41 to \$66.69 per acre. Nonetheless, appellant has not shown that those parcels are similarly situated geographically and geologically to PN-96, nor what the bids received indicate; that is, whether geologic conditions or market forces are shown to be responsible for the amounts offered. Moreover, it has not been shown that BLM's analysis failed to consider changes in the energy market. BLM's DCF calculation took into account gas prices ranging from a low of \$1.65 MCF to a high of \$3.05 MCF (Report at 1-4). Compared with high bids received on the other six comparable parcels, BLM's \$195 estimate of value indicates a decline in the energy market. Appellant has not shown that BLM's rejection of Maralo's \$52 bid is in error.

Even assuming errors were shown in BLM's decision, it must also be proved that appellant's bid represents fair market value. Eugene Chmelar, supra. To accomplish this, Maralo must show that the parcels which it has identified as comparable to PN-96, including the high bid accepted by BLM on PN-52, are situated in geographic and geologic settings similar to PN-96. This appellant has not done. Absent such proof, appellant has failed to carry the burden necessary to prevail. Eugene Chmelar, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

---

Franklin D. Arness  
Administrative Judge

I concur:

---

R.W. Mullen  
Administrative Judge